

1 Zheng “Andy” Liu (S.B.# 279327)
2 Lauren A. Kassouf Quan (S.B.# 331586)
3 *Aptum Law*
4 750 Alam Lane #8244
5 Foster City, CA 94404
6 Tel.: (650) 475-6289
7 Fax: (510) 987-8411
8 Email: Andy.Liu@AptumLaw.us
9 *Attorneys for Plaintiff BuildSimHub Inc.*

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UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA
SAN JOSE DIVISION

BuildSimHub Inc., a Delaware
corporation,

Plaintiffs,

v.

Beijing Jianyi Investment Development
(Group) Co., Ltd., a China limited
company; Jianyi Investment and
Development Inc., a California
corporation; Jianyi Silicon Vally LLC, a
California Limited Liability Company;
Jianyi 1201 San Pablo LLC, a California
Limited Liability Company; and Lanhai
Su, an individual;

Defendants.

Case No.: 5:20-cv-09098-EJD

**MOTION FOR DEFAULT JUDGEMENT;
SUPPORTING MEMORANDUM OF POINTS
AND AUTHORITIES**

The Honorable Edward John Davila

Courtroom 4

Date: May 20, 2021

Time: 9:00 a.m.

**NOTICE OF MOTION AND MOTION FOR
AWARD OF SERVICE EXPENSES AND ATTORNEY FEES**

PLEASE TAKE NOTICE THAT on May 20, 2021, at 9:00 a.m. before the Honorable Edward John Davila, at 280 South 1st Street, San Jose, CA 95113, 5th Floor, Courtroom 4, Plaintiff BuildSimHub Inc. (“BuildSimHub” or “Plaintiff”) will and hereby does move the Court for entry of default judgement against Beijing Jianyi Investment Development (Group) Co., Ltd. (“Defendant”).

Specifically, pursuant to Rule 55 of the Federal Rule of Civil Procedure, Plaintiff seeks a judgment for damages in the sum total of \$300,000.00 and for post-judgment interest calculated accordingly pursuant to 28 U.S.C. §1961(a).

This motion is based on this Notice; the Memorandum of Points and Authorities; the Court’s files and records in this action; Plaintiff’s Complaint; and such other written or oral argument as may be presented at or before the time this motion is taken under submission by the Court.

MEMORANDUM OF POINTS AND AUTHORITIES

A. Procedural Background

This case involves disputes between BuildSimHub (a smart building construction and customization high-tech startup) and end-user customers that actively sought and benefited from Plaintiff’s service, but refused to pay. Complaint, ¶ 1.

After Defendant’s repeated refusals to pay, Plaintiff brought this action for breach of contract, quantum meruit, and unfair business practices arising under the common law and the California statutes. *Id.*, ¶ 2.

On December 16, 2020, Plaintiff filed this lawsuit. Declaration of Zheng Liu (“Liu Decl.”), ¶ 2.

On January 11, 2021 Plaintiff effected personal service of the Summons and Complaint on Defendant Beijing Jianyi Investment Development (Group) Co., as evidenced by the Certificate of Service and Summons Returned Executed on file with this Court. *See* ECF 17 and 18.

On February 1, 2021, Defendant Beijing Jianyi Investment Development (Group) Co., Ltd.'s responsive pleading was due. But Defendant Beijing Jianyi Investment Development (Group) Co., Ltd. did not file the required responsive pleading.

On February 3, 2021, this Court entered default against Defendant Beijing Jianyi Investment Development (Group) Co., Ltd. *See* ECF 22.

B. Plaintiff's state-of-the-art software technology

Plaintiff developed the BIMPort software, a cloud-based construction management software platform. BIMPort's state-of-the-art software technologies significantly ease project management and promote collaboration and communication amongst relevant parties in a building design and construction process. Using the BIMPort software, homeowners, designers, and builders can customize the design, streamline the construction of their desired real properties, and communicate the needs and feedbacks back-and-forth, and tracking construction task items, all on computers. Complaint, ¶ 27.

The BIMPort software has four main functions: Building 3D models and simulations, architectural drawing store and sync abilities, design version control, and design task management and communication capabilities. *Id.*, ¶ 28.

Plaintiff provides the BIMPort software to its customers on a subscription basis. That is, depending on the contract terms, by paying Plaintiff a monthly, yearly, or fixed fee, users of the BIMPort software may access all or a portion of the BIMPort software. *Id.*, ¶ 29.

C. Plaintiff and Defendant entered into a written contract for Plaintiff's software technologies

Plaintiff and Defendant entered into a written Software as a Service Agreement ("SaaS Agreement") for the use of Plaintiff's BIMPort platform. The SaaS Agreement has the "effective date" of March 4, 2019. *Id.*, ¶ 33.

Ms. Lanhai Su entered into the SaaS Agreement on behalf of Defendant: Ms. Su's contact information lists her email as sulanhai@bjjy.com. The email domain name "bjjy" the same initials found in the domain name of Defendant's website, <http://bjjy.com/>. *Id.*, ¶ 32.

Using WeCom, an enterprise messaging application, this signed SaaS Agreement was shared and confirmed by Defendant's head of accounting, Ms. Yawei Zhang at 5:55 pm on the same date the SaaS Agreement was signed, March 18, 2019. The SaaS Agreement was named

as the “JY 30 万合,” which translates into “JY 300,000 contract” in English. JY is the acronym of Jian Yi. A true and correct copy of the screenshot showing Defendant Jianyi China’s confirmation of the signed SaaS agreement between Defendant Jianyi California Corporation and Plaintiff is below:

| <i>Screenshot</i> | <i>Translation</i> |
|-------------------|---|
| | <p>BuildSimHub: we confirmed Jianyi California Corporation’s name, address, and person-in-charge.</p> <p>Jianyi China: No problem. No problem. Thank you.</p> <p>BuildSimHub: [attached the SaaS Agreement].</p> <p>BuildSimHub: Good morning~~ Yawei [name of the person-in-charge at Jianyi China, who was conversing with BuildSimHub], please see if this version is okay.</p> <p>Jianyi China: Good morning~ Let me check ~ Thank you</p> <p>Jianyi China: It is good. No problem. [making an okay gesture].</p> |

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D. Defendant enjoyed Plaintiff's software services but refused to pay

As soon as Defendant entered into the SaaS Agreement, Plaintiff began servicing Defendant right away. *Id.*, ¶ 34.

Plaintiff provided computer software and the associated support services to Defendants on an enterprise-level subscription basis. Per the SaaS Agreement, “the BuildSimHub services, includ[ed] cloud-based BuildSimHub platform and any other platforms, APIs, interfaces, related webs sites, networks, embeddable widgets, dashboard downloadable software and reports, and other services we provide.” *Id.*, ¶ 35.

Under the SaaS Agreement, Plaintiff provided these services to Defendant for an initial service term of 24 months and in exchange for a \$300,000 fee, payable in advance. *Id.*, ¶ 36.

Between March 2019 and on or about February 2020, Defendant Beijing Jianyi Investment Development (Group) Co., Ltd. extensively utilized Plaintiff's BIMPort software application to store, manage, and build 3D models and simulations for at least two of its critical real estate development projects in the U.S.:

(1) an apartment complex located at 1201-1205 San Pablo Ave., Berkeley, CA 94706 (“1201 Berkeley Project”); and

(2) a steel Accessory Dwelling Unit (“ADU”) located at 1653 Old Piedmont Road, San Jose, CA 95132 (“ADU Steel Project”).

Plaintiffs also developed and delivered a customized workflow and plugin development for Defendant as described in the SaaS Agreement (“Customized Workflow & Plugin Development”). *Id.*, ¶¶ 37-38.

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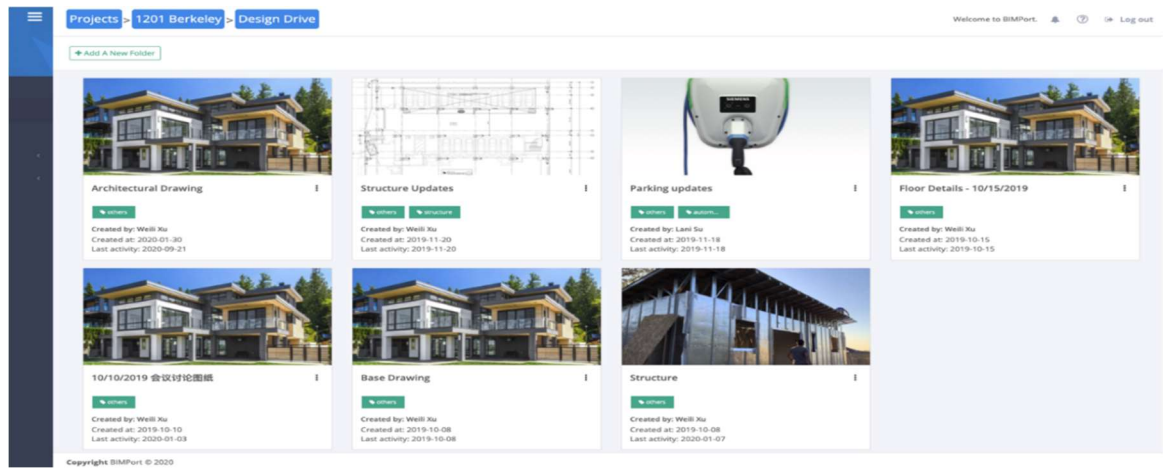
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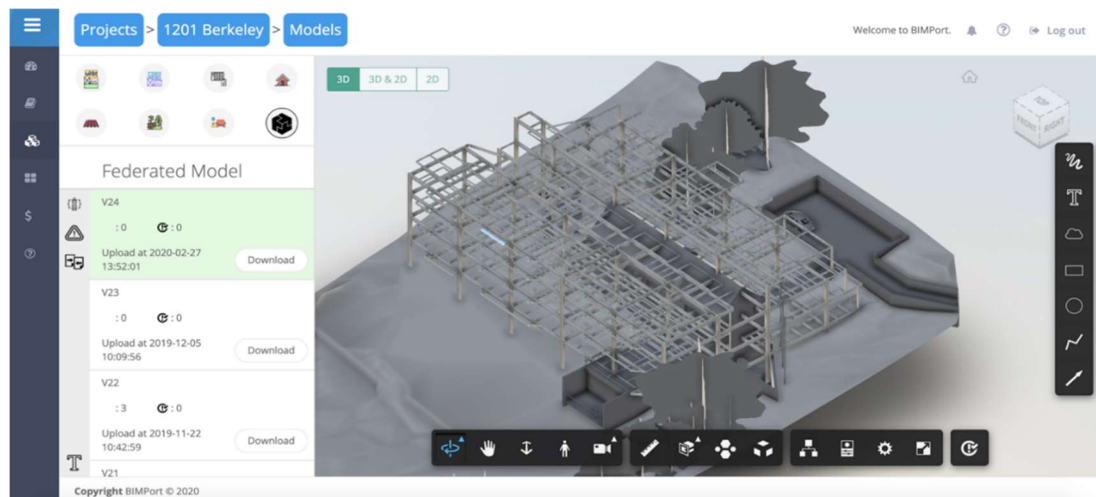
a) *The 1201 Berkeley Project*



The screenshot showing that Defendant created 20 architectural drawings using Plaintiff's BIMPort software

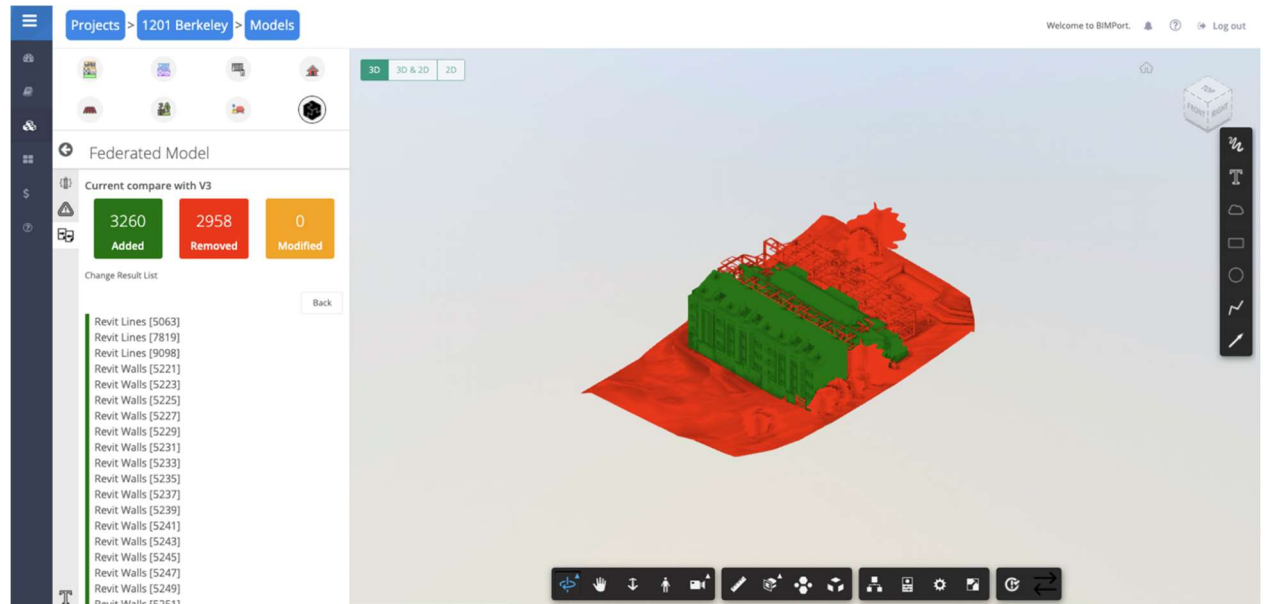
Furthermore, Defendant created 24 different 3D models and ran over 6,200 3D simulations for modification and version control on the BIMPort platform for their 1201 Berkeley Project alone.

Within Plaintiff's BIMPort software, the different 3D models are denoted by a "V" followed by the version number, for example version 24 is "V24". A true and correct screenshot of an example of the numerous 3D models Defendants created on Plaintiff's BIMPort software is below:



The screenshot showing that Defendant created different 3D building models using Plaintiff's BIMPort software

Within Plaintiff's BIMPort software, the number of 3D simulations is indicated by the numbers within the green, red, and orange squares in the left column. Defendants added and removed thousands of simulations for modification and version control, reaching over 6,200 total simulations. A true and correct screenshot of an example of the thousands of 3D simulations Defendants created on Plaintiff's BIMPort software is below:



The screenshot showing that Defendant created thousands of 3D simulations using Plaintiff's BIMPort software

b) The ADU Steel Project

The ADU Steel Project concerned the addition of a 500 square foot 1 bedroom, 1 bathroom Accessory Dwelling Unit to 1653 Old Piedmont Road, San Jose, CA 95132. In the ADU Steel Project, Defendant intended to test and did test the light steel structure it intended to import from China into the United States and sell in the United States. ¶

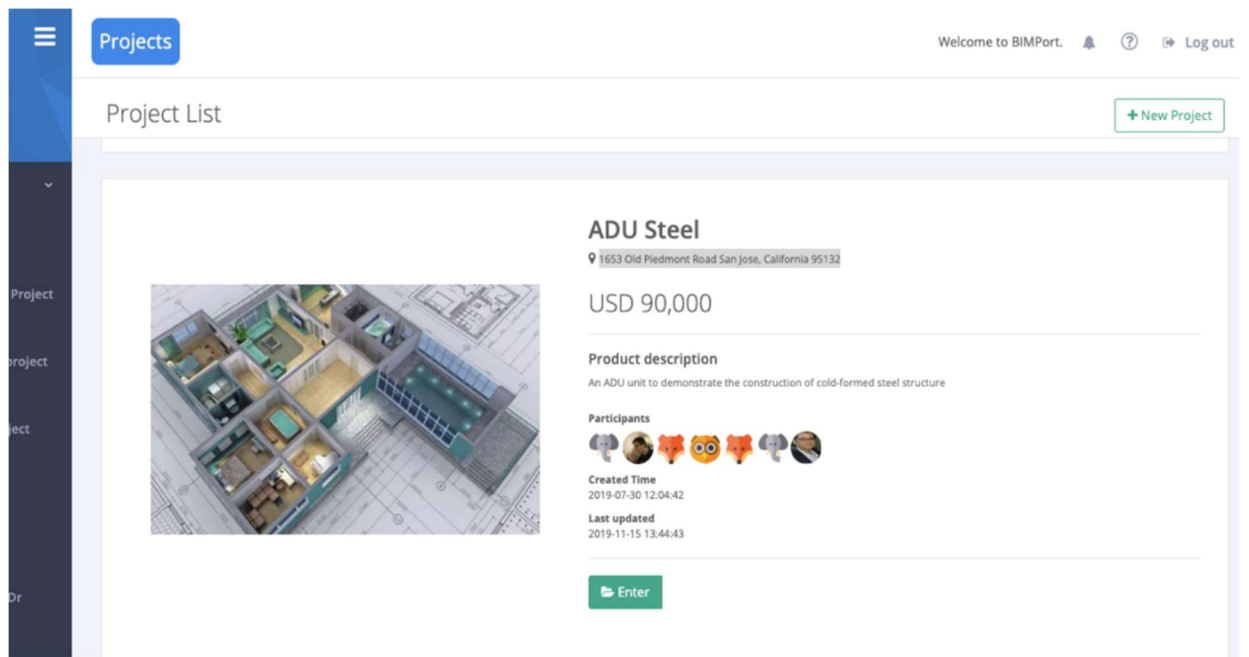
On July 30, 2019 at 12:04 pm, Defendants created an "ADU Steel" modeling project using Plaintiff's BIMPort software.

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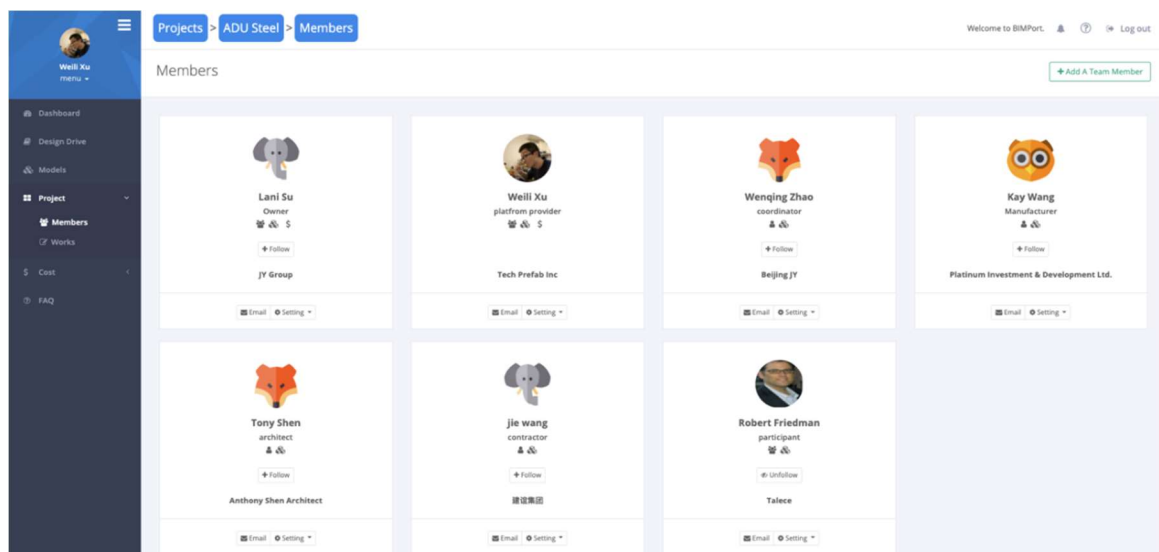
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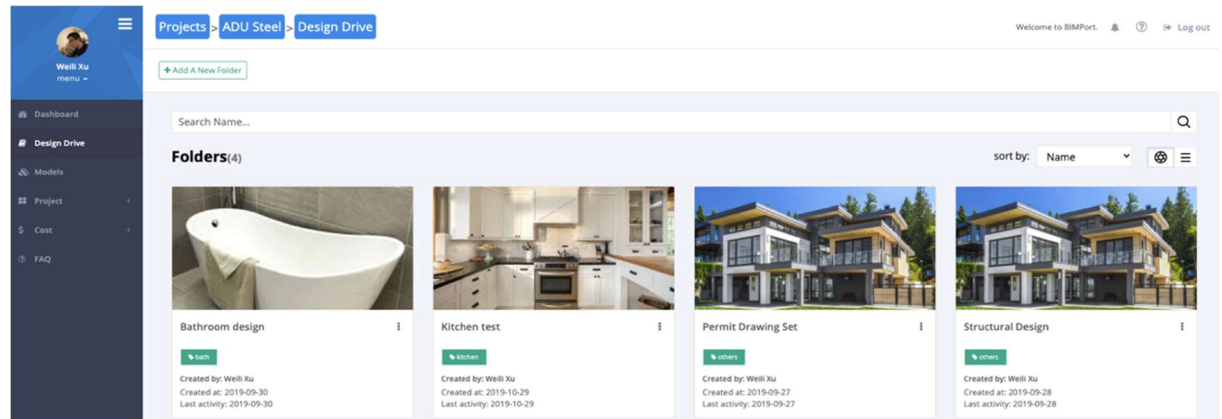
The screenshot showing that Defendant used Plaintiff's BIMPort software in their ADU Steel Project

Multiple users acting on behalf of Defendants that used Plaintiff's BIMPort software in connection with the ADU Steel Project include: Wenqing Zhao, Defendant's project designer, Jie Wang, Defendant's contractor and project manager, and Tony Shen, a local U.S. architect hired by Defendant.



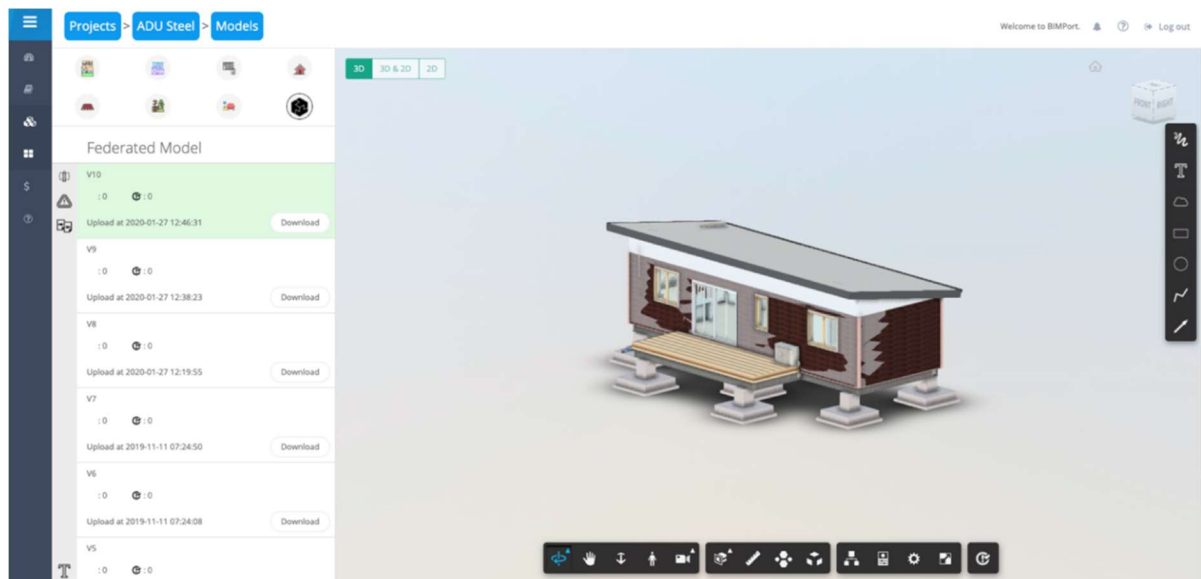
The screenshot showing the users of Plaintiff's BIMPort software in the ADU Steel Project

Defendant actively and extensively used Plaintiff's BIMPort software in their ADU Steel Project. Defendants stored and managed over 30 architectural drawings in four design drive folders on Plaintiff's platform:

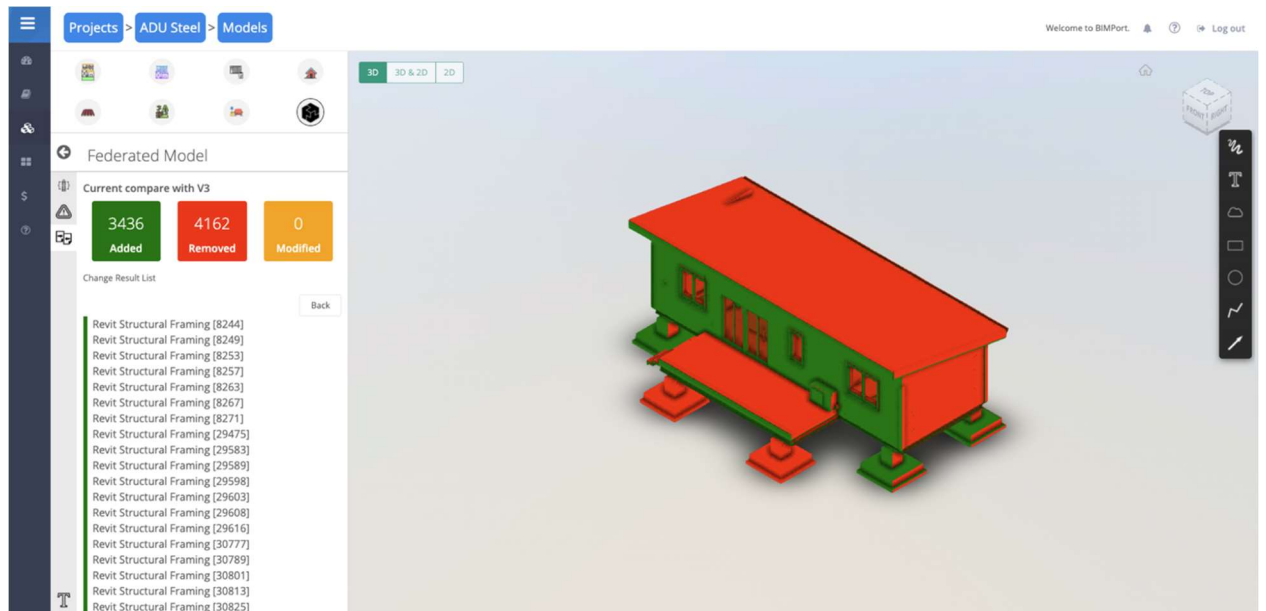


The screenshot showing that Defendants used Plaintiff's BIMPort software in the ADU Steel Project

In their ADU Steel Project alone, Defendants used Plaintiff's BIMPort software to create ten different 3D building models and ran nearly 7,600 3D simulations for modification and version control on the platform. A true and correct screenshot of an example of the numerous 3D models Defendants created on Plaintiff's BIMPort platform is below:



The screenshot showing that Defendants created different 3D building models using Plaintiff's BIMPort software



The screenshot showing that Defendants created thousands of 3D simulations using Plaintiff's BIMPort software

c) Customized Workflow & Plugin Development Project

On November 19, 2019 and November 22, 2019, Plaintiff received requests from Defendant for a customized workflow and plugin development. Defendant indicated that they would pay for Plaintiff's service in providing the customized workflow and plugin development.

Plaintiff diligently worked on the customized workflow and plugins for Defendant. On January 16, 2020, Plaintiff delivered the completed workflow and plugin project to Defendant via WeCom.

Plaintiff's Chief Technology Officer, Haopeng Wang, sent Yongsheng Sun, Defendant's principal software architect, the software deliverables, which included the source code, three demonstration videos, and one instruction document.

On behalf of Defendant, Mr. Yongsheng Sun confirmed receipt of the deliverables.

E. Defendant refused to pay for the software service Plaintiff provided

Throughout all three of these projects--1201 Berkeley Project, ADU Steel Project, and the Customized Workflow & Plugin Development Project—Plaintiff BuildSimHub provided a tremendous amount of software and the associated support services as agreed; the Defendants,

however, failed to pay and continues to refuse to pay. The Defendant reaped the benefits of Plaintiff's services without paying Plaintiff for its services rendered.

LEGAL STANDARD

In *Eitel v McCool*, 782 F.2d 1470, 1472 (9th Cir. 1986), the Ninth Circuit has set forth the following factors to determine whether to grant a default judgement:

- (1) the substantive merits of plaintiff's complaint;
- (2) the complaint's sufficiency;
- (3) the amount of money at stake;
- (4) the possibility of prejudice to plaintiff if relief is denied;
- (5) the possibility of dispute as to any material facts;
- (6) whether default resulted from excusable neglect; and
- (7) the policy of the Federal Rules favoring decisions on the merits.

ARGUMENT

A. Plaintiff's Complaint is meritorious and sufficient

Plaintiff's Complaint sets forth all elements of a breach of contract claim: Plaintiff alleges that it provided valuable software services to Defendant under a written contract, and that Defendant received the services under the contract, but refused to pay.

These allegations are adequately pled and supported by the numerous exhibits attached to the Complaint. Upon a defendant's default, the factual allegations of the complaint, other than those relating to the amount of damages sustained, are deemed admitted. Fed. R. Civ. P. 8(d); *Geddes v. United Financial Group*, 559 F.2d 557, 560 (9th Cir. 1977).

B. The Remaining *Eitel* factors are also satisfied

a. Amount at Stake

Here, Plaintiff is seeking contractual damages of \$300,000.00 based on Defendant's breach of a written contract. The amount at stake is indisputable because it is specified by the written contract.

b. Possibility of Prejudice

1 Here, Plaintiff will suffer prejudice if default judgment is not entered. Defendant
2 enjoyed Plaintiff's service but refused to pay. If default judgment is not entered, Plaintiff will
3 have no recourse.

4 *c. Possibility of Dispute*

5 Here, material facts are undisputable. As evidenced by the screenshots and work history
6 of Defendant, Plaintiff provided valuable software services to Defendant under a written
7 contract, and that Defendant received the services under the contract, but refused to pay. Upon
8 entry of default, all well-pled facts in the complaint are taken as true except for those relating to
9 damages. *TeleVideo 14 Systems, Inc. v. Heidenthal*, 826 F.2d 915, 917 (9th Cir. 1987). Since
10 Plaintiff's factual allegations must be deemed true, no genuine dispute exists as to any
11 material facts.

12 *d. Possibility of Excusable Neglect*

13 Defendant's default did not result from excusable neglect. Defendant was personally
14 served on January 11, 2021. The Clerk entered defaults against Defendant on February 3, 2021.
15 To date, Defendant still has not filed any pleading in this case.

16 Due process requires defendants be given notice of the pendency of the action and be
17 afforded an opportunity to present its objections before a final judgment is rendered. *Mullane v.*
18 *Central Hanover Trust Co.*, 339 U.S. 306, 314 (1950). To date, Defendant still has not filed any
19 pleading in this case.

20 *e. Policy for Decision on the Merits*

21 Such an option is not warranted or feasible in this case. Defendant has been accorded
22 due process and have voluntarily chose not to respond to the Complaint. The Clerk entered
23 defaults against Defendant on February 3, 2021. To date, Defendant still has not filed any
24 pleading in this case. Furthermore, Fed. R. Civ. P.55(a) allows for default judgments to be
25 entered by the Court.

26 **CONCLUSION**

27 For the foregoing reasons, Plaintiff respectfully requests Judgment in its favor in the
28 amount of \$300,000.00 in damages and post judgment interest.

1 Dated: February 6, 2021

Respectfully submitted,

2 *Zheng Andy Liu*

3 By

4 Zheng “Andy” Liu (SBN 279327)
5 Email: Andy.Liu@AptumLaw.us
6 *Attorneys for Plaintiff*